ORIGINAL

Supreme Court, U.S.
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No. 01-729 (18)

IN THE SUPREME COURT OF THE UNITED STATES

GLENN G. GODFREY AND BRUCE M. BOTELHO, PETITIONERS

v.

JOHN DOE I, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION BY AMICUS CURIAE, THE PUBLIC DEFENDER FOR THE STATE OF NEW JERSEY, FOR LEAVE TO LODGE DOCUMENTS UNDER SEAL

Peter A. Garcia
Acting Public Defender of New Jersey

Michael Z. Buncher
Deputy Public Defender
Counsel of Record
Brian J. Neff
Assistant Deputy Public Defender

R.J. Hughes Justice Complex
25 Market Street
Post Office Box 850
Trenton, New Jersey 08625
(609)292-7677

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The Public Defender of the State of New Jersey ("the Public Defender") hereby motions the Court for leave to lodge documents under seal as amicus curiae in Godfrey, et al. v. Doe, et al., No. 01-729, (cert. granted Otte, et al. v. Doe, et al., Feb. 19, 2002, reported at 122 U.S. 1062).

The documents at issue comprise fifty-eight certifications, affidavits, and declarations ("the declarations") dating from 1995 to 2002, submitted by persons convicted of a sex offense, or in several instances, their family member or legal counsel. Each declaration has previously been sealed in a lower court, including the Third Circuit Court of Appeals, except for two recently obtained declarations (declarations of R.A. and T.A., PD291 to PD296). See Declaration of Michael Z. Buncher, dated July 30, 2002, ("the Buncher Decl."), filed in support of amicus curiae's Motion to Lodge Documents Under Seal. Copies of the applicable lower court sealing orders are attached as exhibits to the Buncher declaration. The materials also include a number of newspaper articles. Buncher Decl. ¶9. Each declaration and article describes the broad array of harms -- including death threats, suicides, physical assaults, vandalism, harassment, ostracism, and instances of lost employment and housing -- that persons who fall subject to the New Jersey Registration and Community Notification Act ("Megan's Law") N.J. Stat. Ann. §§ 2C:7-1 et seq., have suffered once the community learned they were a convicted sex

offender.

The materials under consideration are decidedly relevant to the issue before the Court, namely, whether Alaska's sex offender notification law, which implements notification via the Internet, imposes punishment in violation of the Ex Post Facto Clause of the United States Constitution. In Hudson v. United States, 522 U.S. 93 (1997), the Court ruled that whether a measure imposes "an affirmative disability or restraint" is pertinent to determining if it runs afoul of the Constitution's Ex Post Facto Clause. Id. at 99, citing Kennedy v. Mendoza Martinez, 372 U.S. 144, 168-169 (1963). The materials lodged by amicus curiae are directly relevant to the Court's determination of that issue.

The materials should be sealed because they contain sex offenders' identities, indicate that they are subject to Megan's Law, and provide their home address or area of residence. As explained in the declarations, the public dissemination of this information has led to offenders being exposed to countless harms and threats, as well as to an on-going risk and fear of future injury. See also E.B. v. Verniero, 119 F.3d 1077, 1102 (3d Cir. 1997)(describing harms attributed to Megan's Law notification). In some instances, persons have been threatened and harassed simply for participating in litigation challenging the law's constitutionality.[1] The predictable risks of harm posed by this

[1] When one registrant filed a constitutional challenge to Megan's Law, the Guardian Angels and the media undertook a

information being made public is sufficient reason, alone, for granting amicus curiae's motion to seal. See, e.g., Columbus-America Disc. Group v. Atlantic Mut. Ins., 203 F.3d 291, 303 (4th Cir. 2000) (sealing inventory of recovered property to avoid predictable harm to its value); Leucadia v. Applied Extrusion Technologies Inc.,998 F.2d 157, 166 (3d Cir. 1993) (sealing trade secrets); U.S. v. Criden, 681 F.2d 919, 921 (3d Cir. 1982) (sealing information injurious to third parties); Jones v. Clinton, 12 F.Supp.2d 931, 934 (E.D. Ark. 1998)(sealing names of Jane Does subject to sexual harassment); Doe v. Shapiro, 852 F.Supp. 1256, 1257-58 (E.D. Pa. 1994) (sealing information identifying AIDS patient).

In addition, the documents should be sealed as disclosure of the materials will run counter to confidentiality rules established by the New Jersey Legislature and the State Supreme Court. The majority of the declarations and the newspaper articles contain a sex offender's identity, home address or area of residence, and his official State-determined risk of re-offense level ("tier level"). State law requires that this information may not be disclosed until an offender is first provided with a hearing at which his tier level is determined along with whether, and to what extent, his Megan's Law information should be publically disseminated. Doe v.

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campaign to discover his identity. The registrant's name was eventually broadcast on radio and television, and he later received threatening phone calls and a letter stating, "you need to die." See Declaration of C.W., PD48.

Poritz, 142 N.J. 1, 30-33, 662 A.2d 367, 382-83 (1995). To further protect this information, tier classification hearings are held in camera. Id. at 31, 662 A.2d at 382. Even when a court rules to publically release Megan's Law information, its dissemination is tailored based upon a system where the scope of notification is calibrated to the risk of reoffense posed by the individual registrant. See E.B. v. Verniero, 119 F.3d at 1083. In addition, persons receiving the information may only obtain the offender's home address if they agree in writing not to disclose it to third parties. Paul P. v. Farmer, 227 F.3d 98, 103-104 (3d Cir. 1999). Therefore, public disclosure of the declarations would violate confidentiality procedures observed in New Jersey.[2]

Finally, the offenders who have provided amicus with the lodged materials have done so based upon the assurance that their identities would not be made public. Buncher Decl. ¶11. If amicus curiae are unable to file the lodged materials under seal the Court may be denied relevant, otherwise unavailable, information concerning the impact sex offender community notification laws have on the lives of offenders.

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[2] Similarly, notification via the State's sex offender Internet registry, which operates in conjunction with the above described calibrated notification system, is limited to high risk and some moderate risk offenders, see N.J. Stat. Ann. § 2C:7-13. However, notification via the Internet registry only occurs following a hearing addressing an offender's recidivism risk and appropriate scope of notification.

CONCLUSION

For the foregoing reasons, amicus curiae the Public Defender of the State of New Jersey, respectfully requests that the Court grant this motion for leave to lodge documents under seal.

PETER A. GARCIA
Acting Public Defender
of New Jersey

Dated: By: _____
Michael Z. Buncher
Deputy Public Defender
Counsel of Record
Brian Neff
Assistant Deputy Public Defender